SIRAJUDIN *v.* WALKER.

1902.
February 11.

D. C., Kandy, 13,737.

Principal and agent—Liability of proprietor of an estate for debts incurred by superintendent for its maintenance.

Where a proprietor of an estate did not advance moneys to his superintendent, but allowed him to sell the crops from time to time and apply the proceeds towards its maintenance, and the superintendent was obliged to purchase goods and borrow money in order to carry on the cultivation of the estate and keep the coolies employed there supplied with provisions,—

Held, that the proprietor was liable for the debt incurred by the superintendent.

THIS was an action brought against the proprietor of Grotto Estate to recover the sum of Rs. 450, being the value of rice sold and delivered and money lent to his superintendent during July and August, 1899. Defendant denied his liability on the allegation that his superintendent had no authority, express or implied, to purchase goods or borrow money on defendant's credit, and that the plaintiff gave credit to the superintendent, and not to the defendant.

The District Judge found that the defendant did not advance moneys to his superintendent, but that the latter sold the crops

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and applied the proceeds towards the upkeep and cultivation of the estate, and that when the expenditure exceeded the income, the defendant made good the balance against him to the superintendent.

It was not disputed that the defendant's estate got the benefit of the cash and the rice supplied by the plaintiff.

In these circumstances, the District Judge held that the superintendent had the authority to pledge the defendant's credit, and gave judgment for plaintiff as claimed.

Defendant appealed.

Van Langenberg, for appellant.—In the case of *Sinniah Chetty v. John Guy* (*4 S. C. C. 40*) it was held that a superintendent, as such, had no power to buy goods and borrow money upon the credit of his absent employer. The plaintiff here has proved that he was in the Island in July and August, 1899, and had not given the superintendent any authority to purchase goods or borrow money for the estate. His superintendent had not rendered him accounts for July and August, and he knew nothing of the transactions alleged by the plaintiff till September, 1899. The superintendent was dead, and the plaintiff had given him credit, and not the defendant. As the plaintiff has elected to treat the superintendent as his debtor, knowing that he was the agent of the defendant, it was not open to the plaintiff to sue the principal. [BONSER, C.J.—The governing principle of the Roman-Dutch Law in such cases is that one man should not benefit by another's loss. Here the plaintiff furnished rice and money at the request of the superintendent, who had not the means to carry on his work or keep the coolies from starving. The District Judge has found that the estate got the benefit of plaintiff's resources. How could the defendant keep that benefit without paying for it?] The plaintiff elected to treat the agent as his debtor, and therefore there is no action against the principal.

Sampayo, for plaintiff, respondent, was not called upon.

11th February, 1902. BONSER, C.J.—

This is an action brought by a Moorman, a boutique-keeper, against the owner of a tea estate in respect of rice and moneys supplied to the superintendent of the estate for the purpose of working that estate. The District Judge has found that the plaintiff is entitled to this money, and the defendant has been ill-advised enough to appeal. I will read through three lines of

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the District Judge's judgment, which will amply justify my statement:—"It is not disputed that the defendant's estate got "the benefit of the rice and cash supplied by the plaintiff, and "defendant does not suggest that he has in any manner already "paid for them either to the plaintiff or to the superintendent." On what principle he can claim to retain the benefit of this rice and money, without paying for it, I cannot understand. The appellant's counsel relied upon a judgment of this Court, reported in *4 S. C. C. 40*, laying down the rule that the superintendent was not entitled to pledge his employer's credit for goods and moneys supplied for the use of an estate. But in that case there was evidence to prove that there was no necessity whatever for the superintendent to pledge his employer's credit, because the employer kept him constantly in funds amply sufficient for the maintenance of the estate. In this case there was no such fact. On the contrary, the owner had not kept the superintendent supplied with money, but allowed him to apply any money which he might receive on the sale of the produce in maintaining the estate; but it does not follow that that was always sufficient to keep the superintendent in funds. Until the produce was sold and money received, the coolies could not be allowed to starve: rice must be supplied to them. It seems to me that in this case the appellant has neither the law nor the merits on his side. The appeal must be dismissed.

WENDT, J.—I entirely agree.